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ADDENDUM TO DOCUMENT C/33/12
(REPORTS BY REPRESENTATIVES OF STATES AND ORGANIZATIONS
ON THE SITUATION IN THE LEGISLATIVE, ADMINISTRATIVE
AND TECHNICAL FIELDS)

Document prepared by the Office of the Union

The annexes to this document contain the reports from the United States of America, Finland, Japan, Slovakia, the United Kingdom and the European Community.

[Six annexes follow]

ANNEX I

UNITED STATES OF AMERICA

Situation in the Legislative Field

The United States of America ratified the 1991 Act of the UPOV Convention on February 22, 1999.

The fees under the Plant Variety Protection Act are to be increased by 10 to 11% in 2000.

A decision is awaited in Pioneer Hi-Bred International Inc. v. J.E.M. Ag Supply Inc. and others. The defendants are pleading that a more specific statute controls a general one.

Cooperation in Examination

The Plant Variety Protection Office (PVPO) will share an applicant's field trial data, after the certificate issues, when the data becomes public information (there is a photocopy charge).

Situation in the Administrative Field

A new Commissioner (Mrs. Ann-Marie Thro) was appointed on February 16, 1999.

Each crop is now examined by a three-person team (senior examiner, associate examiner, assistant; time assigned according to the number of applications per crop). The objectives of the new system are to improve internal accountability and ownership in the examination process, and to provide transparency to applicants and appropriate recognition to high-performing examining teams.

A Process Engineer function has recently been established to automate the interface of standard correspondence and certificates with the central PVPO database and to support the new Webmaster position in interactive forms development; and a Webmaster position to improve access to public PVPO databases and to work with the Agricultural Marketing Service's Electronic Business team to investigate the technical feasibility of electronic filing of applications and payment of fees (legal implications will be assessed by the AMS Office of General Counsel).

Activities for the Promotion of Plant Variety Protection

A member of the PVPO staff made a presentation on plant variety protection at the XVIth International Botanical Congress held in St Louis, MO, from August 1 to 7, 1999.

A member of the PVPO staff is serving as Vice-Chair (and Chair-elect) of the Intellectual Property Committee of the American Society of Horticultural Science.

The PVPO received visitors from Indonesia, and also from national staff of a U.S.-funded development project in Egypt and a World-Bank-funded development project covering several Central Asian countries.

Developments in Related Field of Activity

Seed legislation

The PVPO is revising its application form to correspond to Title V of the US Federal Seed Act with regard to the number of classes of seed, and generations per class, that an applicant may specify.

Patents, competition law

Applicants for a plant variety protection certificate increasingly have questions regarding double protection (by a certificate and a utility patent) with regard to the effects of the utility patent on the permitted uses of varieties protected by a certificate and on the use of germplasm in breeding programs (in the latter case, the questions arise also in the context of patents not yet issued and therefore not public knowledge).

Genetically modified varieties

The handling of applications for transgenic varieties (and varieties bred from transgenic parents and including the transgene) may become an issue. The Plant Variety Protection Act does not require any special procedure and the application form does not require disclosure of the transgene *per se*, but only of the transgenic trait if it contributes to distinctness. It is conceivable, however, that the PVPO may be required by consumers or the Federal Government to provide that information.

Research and development

The PVPO is developing in collaboration with USDA/ARS suggested guidelines for the molecular characterization of soybean varieties.

[Annex II follows]

ANNEX II

FINLAND

Situation in the Legislative Field

The Law Amending the Law on Breeders' Rights (No. 238/99) to fulfil the 1991 Act of the UPOV Convention entered into force on March 15, 1999. It is expected that the 1991 Act will be ratified shortly.

The following Laws entered into force on the same date:

(a) Law on the Protection by Public and Private Law in Finland of the Plant Variety Right Granted by the European Community (No. 239/99), to fulfil the obligation laid down in Article 107 of Council Regulation (EC) No. 2100/94 of July 27, 1994, on Community plant variety rights.

(b) Law Amending Article 7 of the Act on the Promotion of Plant Breeding (No. 240/99).

Situation in the Administrative Field

In the period from October 12, 1998, to October 1, 1999, 11 applications for protection were received and 12 titles of protection were issued.

Activities for the Promotion of Plant Variety Protection

A lecture on the plant variety protection system of Finland was given by the representative of the Plant Variety Rights Office at the UPOV-WIPO Roving Seminar on the Protection of Plant Varieties under the UPOV Convention, the Patent System and the TRIPS Agreement organized by the UPOV and WIPO in cooperation with the relevant Ministries in Tallinn (Estonia), Riga (Latvia) and Vilnius (Lithuania) in June 1999.

Special attention was paid in the lecture to the ways in which the Finnish national needs were satisfied in the law with regard to the "farmer's privilege" and the collection of the remuneration for seed produced on the farm.

[Annex III follows]

ANNEX III

JAPAN

Situation in the Legislative Field

Japan deposited its instrument of accession to the 1991 Act of the UPOV Convention on November 24, 1998. The revised Seeds and Seedlings Law, which implements that Act, came into force on December 24, 1998.

Cooperation in Examination

Japan has communicated with New Zealand on the conclusion of an agreement on cooperation in examination.

Activities for the Promotion of Plant Variety Protection.

The Japanese Government has contributed to the International Seminar on Technological Innovation and the National Implementation of the Protection of New Varieties of Plants which was held in Kunming, China, from May 17 to 21, 1999, and to the Briefing Workshop on Plant Variety Protection Under the UPOV Convention which was held in Cambridge, United Kingdom, from July 5 to 16, 1999.

An Asian regional meeting will be held in Japan. National seminars will be held in India, Indonesia, Malaysia, the Philippines, and Sri Lanka in early 2000. A training workshop for Asian countries will also be held in the United Kingdom in 2000. These seminars and workshop will have financial support from the Japanese Government.

The Japanese Government, in cooperation with the Japanese International Cooperation Agency (JICA), organized a seminar in Vietnam from April 6 to 8, 1999, to promote the introduction of a governmental decree on the protection of new plant varieties.

[Annex IV follows]

ANNEX IV

SLOVAKIA

Situation in the Legislative Field

Preparatory work for the accession to the 1991 Act of the UPOV Convention has started after the adoption of Regulations Nos. 345/1997 and 346/1997 by the National Council on November 10, 1997. Slovakia is now in a position to accede to the 1991 Act.

Situation in the Administrative Field

During 1998, 14 Slovakian and 55 foreign applications were received (Austria: 4; Belgium: 3; Canada: 1; Czech Republic: 8; France: 17; Germany: 21; Netherlands: 1). In 1999, up to October 1, the Office received 1 Slovakian and 35 foreign applications.

Cooperation in Examination

An agreement on cooperation with Slovenia is under preparation. The Variety Testing Department of the Central Institute for Inspection and Testing in Agriculture (UKSUP) is already testing dwarf French bean, red clover, cocksfoot, timothy and tomato for the Slovenian Agricultural Institute.

Further cooperation between the Czech Republic, Hungary, Poland, Slovakia and Slovenia in the testing of fruit and vegetables is under discussion.

Activities for the Promotion of Plant Variety Protection

Experts from Slovakia participated in the meetings on the DUS ring tests for oilseed rape (Hanover, Germany) and for cocksfoot and tomato (Slupia Wielka, Poland) in summer 1999.

The Slovakian authorities wish to maintain cooperation with the other member States and also to continue the ring tests which contribute greatly to the improvement of DUS testing and thus of the quality of the protection granted. The UKSUP will organize a ring test on European legislation and on the testing of fruit crops.

[Annex V follows]

ANNEX VI

UNITED KINGDOM

Situation in the Legislative Field

The Plant Varieties Act 1997, which came into force on May 8, 1998, brought the United Kingdom law fully into line with the 1991 Act of the UPOV Convention. The instrument of ratification of the 1991 Act was deposited on December 3, 1998.

There was an increase of 5% in fees for plant breeders' rights in respect of application, test, grant and renewal (except renewal fees for roses, which remained unchanged).

Cooperation in Examination

The United Kingdom has signed a bilateral agreement with Sweden which came into effect on February 1, 1999.

Situation in the Administrative Field

During the year ended March 31, 1999, 262 applications were received (22% decrease over previous year), 178 grants were issued (21% increase), 233 grants were terminated (24% decrease) and 1679 grants were renewed (5.8% decrease).

Activities for the Promotion of Plant Variety Protection

The United Kingdom received visitors from China, Japan and Poland wishing to learn more about the United Kingdom (and UPOV) system of plant variety protection.

The United Kingdom, together with the National Institute of Agricultural Botany (NIAB), the Ministry of Agriculture, Forestry and Fisheries of Japan and the World Intellectual Property Organization (WIPO), also contributed to the Briefing Workshop on Plant Variety Protection under the UPOV Convention held in Cambridge.

The Controller of Plant Variety Rights was a speaker at Seminars held in Vietnam and Zimbabwe.

[Annex VI follows]

ANNEX VI

EUROPEAN COMMUNITY

Situation in the Legislative Field

The implementing Commission Regulation (EC) No. 2605/98 of December 3, 1998 (published on December 4, 1998), fixes, in the absence of any agreement, the level of the royalty to be paid by the farmer who makes use of the agricultural exemption (farm-saved seed) to 50% of the amount charged for the licensed production of propagating material.

The Commission is still studying the details of the accession of the European Community to UPOV.

The preparatory discussions on the extension of the European Union which have started with the candidate countries also cover the Community plant variety rights system.

Situation in the Administrative Field

In the period from October 1, 1998, to October 1, 1999, the Community Plant Variety Office (CPVO) received 1845 applications. So far, 1999 shows an increase of 4% compared to the same period in 1998.

Since the beginning of its activity in April 1995, 9252 applications have been received (13% from countries outside the European Union and 87% from member States of the European Union). The applications relate to 468 different genera/species (ornamental plants: 57%; agricultural crops: 25%; vegetables: 12%; fruit trees: 6%; miscellaneous: 1%).

In the period mentioned above, 1391 rights were granted (4765 rights since the beginning of activities).

Last year, the CPVO published six issues of its Official Gazette and a special edition covering the list of protected varieties (status at July 31, 1999). It also has a website (<http://www.cpvo.fr>) for general information. Updated lists of applications received and rights granted are also available on the website.

For the preparation and the carrying-out of the examination of proposed variety denominations, the CPVO currently draws upon the assistance of five European Offices.

Situation in the Technical Field

For the performance of the required DUS tests, the CPVO uses a network of 16 examination offices.

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